IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.RAMACHANDRAN
&
THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 7TH FEBRUARY 2007 / 18TH MAGHA 1928

MACA.No. 1996 of 2005

OPMV.631/1999 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KOTTAYAM

APPELLANTS/PETITIONERS.
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1. SEBASTIAN P.J. PLATHOTTATHIL,
THOZHUTHUKAL PARAMBIL, KOTTAMPAK P.O.
NEEZHOOT.

2. CELINAMMA SEBASTIAN, PLATHOTTATHIL HOUSE
KOTTAMPAK P.O. NEEZHOOR.

BY ADV. SRI.MATHEW JOHN (K)
SRI.SUJESH MENON V.B.

RESPONDENTS: RESPONDENTS AND 3RD PETITIONER.
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1. V.S.HARIDAS, S/O.SREEDHARAN,
PLAMPARAMBIL, KAPPUMTHALA P.O.
KADUTHURUTHY, KOTTAYAM DISTRICT.

2. UNITED INDIA INSURANCE CO.LTD.,
RERPESENTED BY THE DIVISIONAL MANAGER,
KOTTAYAM.

3. LIBY SEBASTIAN (MINOR) REPRESENTED BY
NEXT FRIEND (FATHER) P.J.SEBASTIAN,
PLANTHOTTATHIL, THOZHUTHUMKAL PARAMBIL,
KOTTAMPAK P.O.NEZHOOR.

BY ADV. SRI.MATHEWS JACOB (SR.)
SRI.P.JACOB MATHEW

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 5/2/2007, THE COURT ON 07/02/2007, PASSED THE FOLLOWING:

M. Ramachandran & S. Siri Jagan, JJ.

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M.A.C.A. No. 1996 of 2005

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Dated this, the 7th February, 2007.

J U D G M E N T

Siri Jagan, J.

The claimant in O.P(MV) No. 631/1999 of the Motor Accidents Claims Tribunal, Kottayam has come up in appeal against the award in that O.P(MV). Although in the appeal memorandum, the appellant claimed enhanced compensation also, counsel for the appellant confined his argument on the question of absolving the Insurance Company alone.

2. The appellant was travelling in a goods autorickshaw. According to him, he was accompanying the goods that was being carried in the autorickshaw. The accident happened when he was returning in the vehicle after unloading the goods at its destination. The contention of the appellant is that since the appellant was the authorised agent of the owner accompanying the goods, he is entitled to be covered under the insurance policy taken by the owner of the vehicle.

3. The appellant contends that he was not given sufficient opportunity to prove the above fact before the Tribunal. Counsel for the appellant would submit that the appellant was only a gratuitous passenger in a goods vehicle and on that premise absolved the Insurance Company from liability. He therefore prays that the matter may be remanded to the Tribunal to enable the appellant to adduce sufficient evidence to prove his case that he was actually an authorised agent of the owner of the goods which were carried in the goods autorickshaw.

4. On the other hand, counsel for the Insurance Company would seriously dispute this contention. He would point out that as is evident from the First Information Statement, Ext. A2, along with the appellant, another person, namely, one Sibi was also travelling in the

autorickshaw in addition to the driver which itself would go to show that the appellant's contention is unsustainable. He would also submit that the vehicle did not have a permit to carry passengers in the autorickshaw. That being so, the appellant could not have validly contended that he was actually accompanying the goods in the autorickshaw. He further contended that the goods autorickshaw having only one seat for the driver, there is no provision for carrying a passenger at all and therefore in any event the appellant could not have been a person entitled to be covered under the policy.

5. In answer to the above contention, the appellant would claim that if he was given an adequate opportunity to adduce evidence, he could have proved all the ingredients available for third party insurance coverage under Section 147 of the Motor Vehicles Act. Citing the written statement of the Insurance Company, counsel would contend that the Insurance Company did not have any contention that the permit of the vehicle in question did not contemplate provision for carrying of passengers in the vehicle.

6. Counsel for the Insurance Company relied on the decision of the Supreme Court in M.V. Jayadevappa and another v. Oriental Fire & Genl. Ins. Co. Ltd. and others, 2005 ACJ 1801, wherein when the policy described the vehicle as a commercial vehicle and the vehicle is a goods vehicle not authorised to carry passengers, the Insurance Company is not liable. He also relies on the decision of National Insurance Company Ltd. v. Baljit Kaur, 2004 (1) KLT 938 (SC) in support of his contention that a gratuitous passenger in a goods vehicle is not liable to be covered under the 'Act Policy'. He cited the decision of Oriental Insurance Company Ltd. v. Devireddy Konda Reddy, 2003 (1) KLT 583 (SC) also in support of above proposition. Another decision relied upon is the famous case of New India Assurance Company Ltd., v. Asha Rani, 2003(1)(1) KLT 165 (Supreme

Court) on the subject. Counsel for the appellant relied on the decision of United India Insurance Company Ltd., v. Suresh, 2006 (4) KLT 333 in support of his proposition that the claim of the passenger in a goods carriage will be sustainable even if the carriage is not bringing goods at the time of the accident.

7. We are not inclined to go into all these questions since, according to us, even for deciding the above question of law, some more facts and evidence are necessary. The appellant contends that he was not given sufficient opportunity to do the same. We deem it fit to grant the appellant one more opportunity to prove his case that the appellant was liable to be covered under the insurance policy taken by the owner of the offending vehicle coming within the purview of Section 147 of the Motor Vehicles Act, 1988. In the above circumstances, we set aside the award in O.P(MV) 631/1999 only to the extent of finding the Insurance Company not liable to satisfy the award and direct the Tribunal to decide that question afresh after affording an opportunity to both the appellant and the Insurance Company as well as the owner of the vehicle, if he so desires, to prove their respective contentions regarding the coverability of the appellant for insurance under Section 147 of the Motor Vehicles Act. If necessary, the parties would also be granted an opportunity to supplement their pleadings in this regard. The appeal is disposed of as above.

Sd/- M. Ramachandran, Judge.

Sd/- S. Siri Jagan, Judge.

Tds/

[True copy]

P.S to Judge.